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\*N.Y. BAR ONLY

March 26, 1986

BY HAND

Mr. Michael Mandracchia  
Bureau of Industrial Site Evaluation  
Division of Waste Management  
New Jersey Department of Environmental  
Protection  
428 East State Street  
Trenton, New Jersey 08625

RE: In the Matter of Hexcel Corporation  
ECRA Case No. 86009, Administrative  
Consent Order

Dear Mike:

Enclosed please find two (2) executed copies of the  
Administrative Consent Order and an irrevocable Standby Letter  
of Credit in the amount of \$3 million. As soon as you have the  
Administrative Consent Order executed, please call me so that I  
may send a messenger to bring it back to me.

Thank you for your assistance in this matter.

Very truly yours,



Edward A. Hogan

EAH/jac  
Enclosures

MAILED  
MAR 27 1986  
FBI NEW YORK  
RECEIVED  
MAR 27 1986  
FBI NEW YORK

SDMS Document



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5. Hexcel Corporation ("Hexcel"), a Delaware corporation, through its Hexcel Industrial Chemicals Group subdivision, owns and operates a chemical manufacturing facility located at 205 Main Street, Lodi, Bergen County; said site being further known as Block 81-A, Lot 10-A and Block 161-A, Lots 1A and 2A on the tax map of the Borough of Lodi ("Lodi facility" or "subject Industrial Establishment"). Hexcel has informed NJDEP that the Standard Industrial Classification ("SIC") number which best describes the operations at the Lodi facility is 2833. Hexcel has further informed NJDEP that hazardous substances are used in the operations at the Lodi facility. The Lodi facility is an Industrial Establishment as defined by ECRA.
6. On December 31, 1985, Hexcel entered into a Purchase Agreement with FOA Corporation ("FOA"), a Delaware Corporation, to sell the Hexcel Industrial Chemicals Group subdivision to FOA ("Transaction"). The Transaction includes the sale of the Lodi facility. NJDEP and Hexcel expressly agree that the Transaction is a change in ownership of the Lodi facility subject to ECRA and the Regulations.
7. On January 7, 1985, Hexcel submitted to NJDEP the General Information Submission ("GIS") portion of the Initial Notice as required by N.J.A.C. 7:1-3.7. NJDEP reviewed the GIS, assigned the Lodi facility ECRA Case #86009, and in a letter dated January 9, 1986 found the GIS to be complete. On January 15, 1986, Hexcel submitted to NJDEP the Site Evaluation Submission ("SES") portion of the Initial Notice. NJDEP reviewed the SES, and in a letter dated January 21, 1986 found the SES to be incomplete.
8. Hexcel has informed NJDEP that, due to the multi-state nature of the Transaction with only the Lodi facility located in New Jersey, the current tenuous viability of the business conducted at the Lodi facility, and the competitive disadvantage posed by an unconsummated transaction, the Transaction must be consummated on or about January 31, 1985. Hexcel has further informed NJDEP that Hexcel cannot comply with all of the requirements of ECRA and the Regulations prior to January 31, 1986. Therefore, Hexcel has requested that NJDEP prepare an Administrative Consent Order which, when effective, will allow the Transaction to be consummated prior to the completion of all administrative requirements.
9. In appropriate cases, NJDEP may allow transactions subject to ECRA to proceed prior to completing the standard ECRA administrative process by execution of an Administrative Consent Order. The Administrative Consent Order specifies a time schedule for completion of ECRA requirements by the industrial establishment and provides for financial assurance in a form and amount acceptable to NJDEP prior to consummation of any transactions subject to ECRA. Failure to fully comply with all the terms and conditions of the Administrative Consent Order shall subject the Ordered Party(ies) to the full range of penalties and remedies prescribed in the Act, the Regulations, and the Administrative Consent Order.

#### ORDER

NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:

#### 10. ECRA Program Requirements

- A. Hexcel shall complete the SES portion of the Initial Notice required by N.J.A.C. 7:1-3.7 within thirty (30) days from the effective date of this Administrative Consent Order.

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- B. Within ninety (90) days from receipt of NJDEP's written approval of the Sampling Plan prepared, pursuant to N.J.A.C. 7:1-3.7(d)14 and N.J.A.C. 7:1-3.9, Hexcel shall initiate, complete, and submit to NJDEP the results from any NJDEP-approved Sampling Plan including, but not limited to, complete delineation of environmental contamination on-site, and any off-site environmental contamination resulting from discharges of hazardous wastes or substances on or from the subject Industrial Establishment. NJDEP and Hexcel recognize that additional sampling may be necessary during the various stages of the implementation of this Administrative Consent Order and ECRA, including during the implementation of a Cleanup Plan, at the subject Industrial Establishment to delineate fully the nature and extent of environmental contamination on-site, and any off-site environmental contamination resulting from discharges of hazardous substances or wastes on or from the subject Industrial Establishment. Therefore, Hexcel agrees to submit any additional sampling plans for NJDEP review and approval required by NJDEP in writing during the various stages of the implementation of this Administrative Consent Order and ECRA, including during the implementation of a Cleanup Plan, to further delineate the nature and extent of environmental contamination on or from the subject Industrial Establishment. NJDEP and Hexcel mutually agree that Hexcel shall submit any additional sampling plans required to NJDEP for review and approval within thirty (30) days of the receipt of said written request. Within ninety (90) days from receipt of NJDEP's written approval of any additional sampling plans, Hexcel shall initiate, complete and submit to NJDEP the results from any additional NJDEP-approved sampling plan required pursuant to this paragraph.
- C. Hexcel shall submit a Negative Declaration or Cleanup Plan within sixty (60) days from receipt of a written demand from NJDEP for a Negative Declaration or Cleanup Plan. If a Cleanup Plan is required, the Cleanup Plan shall address remediation of any contamination identified on or from the subject Industrial Establishment. Any Negative Declaration or Cleanup Plan submitted shall conform to N.J.A.C. 7:1-3. NJDEP shall notify Hexcel in writing requiring Hexcel to submit either a Negative Declaration or Cleanup Plan when sampling results have satisfied NJDEP's requirement to delineate fully the nature and extent of environmental contamination on or from the subject Industrial Establishment.
- D. Hexcel shall implement any NJDEP approved Cleanup Plan in accordance with the approved time schedule or defer implementation of all or part of the Cleanup Plan subject to NJDEP approval pursuant to N.J.A.C. 7:1-3.14.
- E. Should NJDEP determine that any submittal made under Paragraph 10 of this Administrative Consent Order is inadequate or incomplete, then NJDEP shall provide Hexcel with written notification of the deficiency(ies), and Hexcel shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) days from receipt of such notification.
- F. All submissions required pursuant to Paragraph 10 or any other provision of this Administrative Consent Order shall be accompanied by all appropriate fees required pursuant to the Fee Schedule for ECRA, N.J.A.C. 7:1-4.

11. Financial Assurance

- A. Hexcel shall obtain and provide to NJDEP financial assurance in the form of a surety bond or letter of credit in the amount of \$3,000,000 prior to execution of this Administrative Consent Order. The financial assurance must conform with the requirements of N.J.S.A. 13:1K-9(b)3, N.J.A.C. 7:1-3.10, N.J.A.C. 7:1-3.13, and this Administrative Consent Order.
- B. Hexcel shall establish and submit to NJDEP a standby trust fund within seven (7) days from the effective date of this Administrative Consent Order. The financial institution which issues the financial assurance shall agree to promptly and directly deposit all amounts up to the total value of the financial assurance into the standby trust fund upon demand by NJDEP.
- C. Upon NJDEP approval of a Cleanup Plan, Hexcel shall amend the amount of the financial assurance, described in A. above, to equal the estimated cost of implementation of the approved Cleanup Plan, or shall provide such other financial assurance as may be approved by NJDEP in an amount equal to the estimated cost of implementation of the approved Cleanup Plan.
- D. In the event that NJDEP determines that Hexcel has failed to perform any of its obligations under this Administrative Consent Order or ECRA, NJDEP may draw on the financial assurance provided, however, that before any such demand is made, NJDEP shall notify Hexcel in writing of the obligation(s) with which it has not complied, and Hexcel shall have reasonable time, not to exceed fourteen (14) calendar days, to perform such obligation(s) to NJDEP's satisfaction. Nothing in this paragraph shall prevent NJDEP from collecting stipulated penalties pursuant to the terms of this Administrative Consent Order for cause.
- E. Upon NJDEP's written approval of a Negative Declaration, Hexcel shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this Administrative Consent Order for the facility which is the subject of the NJDEP-approved Negative Declaration. Upon NJDEP's written approval of the completion of any cleanup required by this Administrative Consent Order, as verified by final site inspection pursuant to N.J.A.C. 7:1-3.12(e) and upon Hexcel's satisfaction of all financial obligations in connection therewith, Hexcel shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this Administrative Consent Order for the facility at which the approved cleanup has been completed.

12. Additional Conditions of Consent

- A. Hexcel shall allow NJDEP access to the subject Industrial Establishment for the purpose of undertaking all necessary monitoring and environmental cleanup activities. Prior to entry into this Administrative Consent Order, Hexcel shall provide NJDEP with appropriate documentation that FOA shall allow the NJDEP access required herein.

- B. Compliance with the terms of this Administrative Consent Order shall not excuse Hexcel from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by ECRA through this Administrative Consent Order. The execution of this Administrative Consent Order shall not excuse Hexcel from compliance with all other applicable environmental permits, statutes, regulations and/or orders and shall not preclude NJDEP from requiring that Hexcel obtain and comply with any permits, and/or orders issued by NJDEP under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act ("Spill Act") N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be pre-empted by the terms and conditions of this Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. Should any of the measures to be taken by Hexcel during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the NJPDES regulations, N.J.A.C. 7:14A-1 et seq., then Hexcel shall obtain a NJPDES permit or permit modification from NJDEP prior to commencement of said activity.
- C. NJDEP agrees that it will not bring any action, nor will it recommend that the Attorney General's Office bring any action for failure to comply with (a) the time requirements in N.J.S.A. 13:1K-9(b)1 that NJDEP be notified within five (5) days of execution of an agreement of sale and (b) the time requirement in N.J.S.A. 13:1K-9(b)2 that a Negative Declaration or Cleanup Plan be submitted sixty (60) days prior to transfer of title. NJDEP also agrees that it will not bring any action, nor will it recommend that the Attorney General bring any action seeking monetary penalties for Hexcel's failure to meet the time requirements specified in (a) and (b) of this paragraph.
- D. No obligations imposed by this Administrative Consent Order (other than by paragraph "E" below) are intended to constitute a debt, claim, penalty or other civil action which could be limited or discharged in a bankruptcy proceeding. All obligations imposed by this Administrative Consent Order shall constitute continuing regulatory obligations imposed pursuant to the police power of the State of New Jersey, intended to protect the public health, safety and welfare.
- E. In the event that Hexcel fails to comply with any of the provisions of this Administrative Consent Order, Hexcel shall pay to NJDEP stipulated penalties in the amount of \$5,000.00 for each day on which Hexcel fails to comply with any obligation under this Administrative Consent Order provided, however, that no such stipulated penalty shall be payable by Hexcel with respect to such period that said failure to comply results from Force Majeure.

- F. The provisions of this Administrative Consent Order shall be binding upon Hexcel and its officers, management officials, employees, agents, successors in interest, assigns, tenants, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
- G. Hexcel's failure to submit an approvable Negative Declaration or Cleanup Plan shall constitute grounds for the NJDEP to void the subject sale or transfer. NJDEP's right to void the subject sale or transfer shall terminate upon NJDEP's written approval of an appropriate Negative Declaration or Cleanup Plan submitted by Hexcel pursuant to this Administrative Consent Order and ECRA.
- H. Any submission to be made to NJDEP in accordance with this Administrative Consent Order shall be directed to:

Anthony J. McMahon, Chief  
Bureau of Industrial Site Evaluation  
Division of Waste Management  
428 East State Street  
Trenton, NJ 08608

13. Force Majeure

If any event occurs which purportedly causes or may cause delays in the achievement of any deadline contained in this Administrative Consent Order, Hexcel shall notify NJDEP in writing within ten (10) days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length, precise cause or causes, measures taken or to be taken and the time required to minimize the delay. Hexcel shall adopt all necessary measures to prevent or minimize any delay. If any delay or anticipated delay had been or will be caused by fire, flood, storm, riot, strike or other circumstances alleged to be beyond the control of Hexcel, then the time for performance hereunder may be extended by NJDEP for a period no longer than the delay resulting from such circumstances, provided that NJDEP may grant additional extensions for good cause. If the events causing such delay are not found by NJDEP to be beyond the control of Hexcel, failure to comply with the provisions of the Administrative Consent Order shall constitute a breach of the Administrative Consent Order's requirements. The burden of proving that any delay is caused by circumstances beyond Hexcel's control and the length of such delay attributable to those circumstances shall rest with Hexcel. Increases in the costs or expenses incurred in fulfilling the requirements contained herein shall not be a basis for an extension of time. Similarly, delay in completing an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements.

14. Reservation of Rights

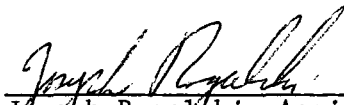
This Administrative Consent Order shall be fully enforceable in the New Jersey Superior Court having jurisdiction over the subject matter and signatory parties upon the filing of a summary action for compliance pursuant to ECRA. This Administrative Consent Order may be enforced in the same manner as an Administrative Order issued by NJDEP pursuant to other statutory authority and shall not preclude NJDEP from taking whatever action it deems appropriate to enforce the environmental protection laws of the State of New Jersey in any manner not inconsistent with the terms of this

Administrative Consent Order. It is expressly recognized by NJDEP and Hexcel that nothing in this Administrative Consent Order shall be construed as a waiver by NJDEP of its rights with respect to enforcement of ECRA on bases other than those set forth in the ECRA Program Requirements section of this Administrative Consent Order or by Hexcel of its right to seek review of any enforcement action as provided by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Furthermore, nothing in this Administrative Consent Order shall constitute a waiver of any statutory right of NJDEP to require Hexcel to implement additional remedial measures should NJDEP determine that such measures are necessary to protect the public health, safety and welfare.

15. Hexcel hereby consents to entry of this Administrative Consent Order and waives its right to a hearing concerning the terms hereof pursuant to N.J.S.A. 52:14B-1 et seq.
16. This Administrative Consent Order shall take effect upon the signature of all parties. Upon the signature of all parties, Hexcel may complete the sale or transfer of the Lodi facility subject to the Administrative Consent Order.

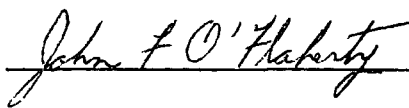
NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

Date: 3/26/86

By:   
Joseph Rogalski, Assistant  
Director for Enforcement &  
Field Operations

HEXCEL CORPORATION

Date: 31st of Jan 1986

By:   
Name: John F. O'Flaherty  
Title: Vice President, Secretary